

S.B. Civil Writ Petition No.2257/2007
Parmanu Vidhyut Karamchari Union & Anr. Vs. Union of India & Anr.

S.B. Civil Writ Petition No6407/2006
Khemraj Nayak & Anr. Vs. Union of India & Anr.

S.B. Civil Writ Petition No.12554/2009
Saju Surendran Vs. Union of India & Anr.

S.B. Civil Writ Petition No.12684/2009
Vinod Kumar Agarwal Vs. Union of India & Anr.

S.B. Civil Writ Petition No.6267/2010
Parmanu Vidhyut Karamchari Union & Anr. Vs. Union of India & Anr.

S.B. Civil Writ Petition No.6268/2010
Parmanu Vidhyut Karamchari Union & Anr. Vs. Union of India & Anr.

PRESENT

Mr. Suresh Kashyap, for the petitioners.
Mr. Tarun Verma on behalf of
Mr. J.K. Singhi,) for the respondents.
Mr. Dharmendra Jain), for respondent No.2.
Mr. Mukesh Kumar Meena, for the Union of India.

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The batch of writ applications involve common question of law and facts, and therefore, are being adjudicated upon by this common order with the consent of the parties.

2. The petitioners, have assailed the legality and validity of the orders passed by the Government of India declining to make reference of the Industrial Dispute(s) between the parties.

3. In **SBCW No.2257/2007 (Parmanu Vidhyut Karamchhari Union & Anr. Vs. Union of India & Anr.)**, the industrial dispute is between the General Secretary,

Rajasthan Anushakti Pariyojna Karamchari Sangh (INTUC), Rawatbhata and Site Director Rajasthan Atomic Power Station, Unit 1 to 4, Po. Anushakti, Rawatbhata, for not according promotion to Shri Sushil Kumar Govil from the post of Trademan E to Trademan F. The Ministry, *prima facie*, did not find the dispute fit for adjudication for the reason that Shri Sushil Kumar Govil was considered for promotion in November, 2001, but the Standing Selection Committee did not find him fit for promotion. Again on a subsequent consideration by the committee, in the year 2002, the petitioner was not found fit for promotion. According to the prevailing norms of promotion, Shri Sushil Kumar Govil, thereafter was to be considered for promotion after a lapse of 2 years i.e. for the year 2005.

4. In **SBCWP No. 6407/2006 (Khemraj Nayak & Anr. Vs. Union of India & Anr.)**, the industrial dispute is between the General Secretary, Rajasthan Anushakti Pariyojna Karamchari Sangh (INTUC), Rawatbhata and management of Rajasthan Atomic Power Project Unit 3 & 4, Rawatbhata. The Ministry did not consider the dispute fit for adjudication for the reason that after acceptance of the recommendation of the Anand Committee, the management has re-designated a large section of employees and thus, the claim of the union that the applicants have been degraded arbitrarily has no substance.

5. In **SBCWP No.12554/2009 (Saju Surendran Vs. Union of India & Anr.)**, the industrial dispute is between the management of M/s. G.V.K. Jaiapur Expressway (P) Ltd. and M/s Skylark Securities (P) Ltd. New Delhi and Shri Saju Surendran, over illegal termination of his services. *Prima facie*, the Ministry did not consider the dispute fit for adjudication since the claimant was being paid and engaged by the contractor, M/s Skylark Securities Private Limited, and therefore, the claim for reinstatement raised against the principal employer was not considered to be an industrial dispute.

6. In **SBCWP No.12684/2009 (Vinod Kumar Agarwal Vs. Union of India & Anr.)**, the industrial dispute is between the management of Gem & Jewellery Export Promotion Council and Central Indian Trade Union over the matter for not according promotion and pay scale to Shri Vinod Kumar, Accountant. *Prima facie*, the Ministry did not consider the dispute fit for adjudication for the reason that grant of promotion and higher pay, other than prescribed under the Minimum Wages Act, 1948, is the prerogative of the management, and therefore, it was not considered an industrial dispute.

7. In **SBCWP No.6267/2010 (Parmanu Vidhyut Karamchari Union & Anr. Vs. Union of India & Anr.)**, the industrial dispute is between the management of Site Director, RAPS, Anushakti, Kota and Parmanu Vidyut

Karamchari Union for denial of promotion to Shri Vijay Kumar Singh. *Prima facie*, the Ministry did not consider the dispute fit for adjudication for the reason that grant of promotion is a policy matter of the management and cannot be claimed as a matter of right, especially when the claimant failed to prove discrimination in the matter.

8. In ***SBCWP No.6268/2010 (Parmanu Vidhyut Karamchari Union & Anr. Vs. Union of India & Anr.)***, the industrial dispute is between the management of Site Director, RAPS, Anushakti, Kota and Parmanu Vidyut Karamchari Union for denial of promotion to Shri Ramjani Khan wherein the Ministry, *prima facie*, did not consider the dispute fit for adjudication since grant of promotion is a policy matter of the management and cannot be claimed as a matter of right, especially when the claimant failed to prove discrimination in the matter.

9. The learned counsel for the petitioners reiterating the pleaded facts and grounds contended that the Conciliation Officer forwarded the failure report(s) in accordance with Section 12(4) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act of 1947', for short) to respondent-Union of India. According to the learned counsel for the petitioners, the impugned order(s) declining reference of the dispute for adjudication by the Ministry, is bad in the eye of law as well as in view of the several judicial pronouncements. Learned counsel have placed reliance on the opinion of this

Court in SBCWP No.3436/2007 (Vinod Kumar Parmar Vs. Union of India & Ors.), decided on 20th November, 2014.

10. Learned counsel appearing on behalf of the respondent-Union of India, has supported the impugned order(s) and the stand of the Ministry for refusing to make reference of the Industrial Dispute(s) for the reasons detailed out in the impugned order(s).

11. I have heard the learned counsel for the parties and with their assistance perused the materials available on record.

12. Indisputably, the dispute raised is out of an employment between the petitioners and the respondent(s).

13. The terms and conditions of offer of appointment, grant of promotion and all other ancillary matters are open for determination by the Competent Forum i.e. Industrial Tribunal/Labour Court, on the basis of the pleadings of the parties and evidence that may be adduced. In case, the petitioner(s) failed to prove their case, the Forum provided under the Act of 1947, would adjudicate upon the dispute accordingly. The appropriate Government cannot assume the role of an adjudicatory authority. The refusal by the appropriate Government to make reference of the dispute(s) *prima facie* appears to be contrary to the object underlying the Act of 1947 as well as law declared by the Hon'ble Apex Court of the land.

14. While dealing with somewhat identical controversy in the case of Vinod Kumar Parmar (Supra), this Court observed thus:

“6. Learned counsel for the petitioner further refers to and relies upon an opinion of the Coordinate Bench of this Court in the case of Jakir Hussain Versus Union of India & Anr. (S.B. Civil Writ Petition Number 4286/2002) decided on 19.11.2008; wherein, according to learned counsel for the petitioner, the same department was a party respondent and somewhat similar controversy was adjudicated upon quashing the impugned order dated 15.3.2002, declining to make reference of the dispute therein and remitting the matter back to the appropriate Government to make a reference to the concerned Industrial Tribunal/Labour Court in accordance with law.

7. No doubt, making a reference under Section 10(1) of the Act of 1947, is within the discretion of the appropriate Government. The Hon'ble Apex Court of the land after a survey of several earlier judgments reiterating the view that the function of the appropriate Government is an administrative function while exercising the power under Section 10(1) of the Act of 1947, and not a judicial or quasi-judicial function. In the case of Telco Convoy Drivers⁴ Mazdoor Sangh & Anr. v. State of Bihar & Ors.: 1989 (3) SCC 271, Hon'ble Supreme Court held that while performing an administrative function, the Government could not delve into merits of dispute and take upon itself determination of lis, which would certainly be in excess of the power conferred on it by Section 10 of the Act of 1947. However, there may be exceptional cases in which the appropriate Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference.

8. In the instant case at hand, when the dispute is as to whether the petitioner has been fixed in the appropriate pay scale in accordance with the recruitment rules for the post; the appropriate Government was not justified in

holding that the revision of pay scale is an administrative matter, and as such, the matter raised, cannot be construed to be an 'industrial dispute'. The principles propounded in the case of Telco Convoy Drivers Mazdoor Sangh (supra), have been reiterated in the case of Sultan Singh v. State of Haryana & Anr.: (1996) 2 SCC 66 and Secretary Indian Tea Association Versus A.K. Bharat: 2000 (3) SCC 93.

9. Thus, in the light of the principles, as propounded by the Hon'ble Apex Court of the land, in the cases aforesaid, it can safely be concluded that a writ of mandamus would be issued to the appropriate Government to reconsider the refusal to make a reference in cases where (a) the refusal is on irrelevant, irrational or extraneous grounds; (b) the refusal is a result of appropriate government examining the merits of the dispute and5 prejudging/adjudicating/determining the dispute; (c) the refusal is mala fide or dishonest or actuated by malice and/or (d) the refusal ignores the material available in the failure report of the Conciliation Officer or is not supported by any reason."

15. It is further given out that the order passed in the case of Vinod Kumar Parmar (supra) has already been complied with.

16. For the reasons and discussions hereinabove, the writ application(s) succeed and are hereby allowed.

17. The impugned orders dated 24th March, 2006, 30th October, 2002, 29th July, 2009, 3rd July, 2009, 7th January, 2010 and 7th January, 2010 are hereby quashed and set aside.

18. The Central Government is directed to re-consider the matter(s) in the light of observations hereinabove and take an appropriate decision on the request of the petitioner(s) for

reference of the dispute to the industrial adjudicatory authority.

19. The respondents are further directed to ensure compliance of this order within a period of six weeks from the date of receipt of a certified copy of this order.

20. A copy of this order be placed in each of the file.

(VEERENDR SINGH SIRADHANA),J.

Pcg

All corrections made in judgment/order have been incorporated in the judgment/order being emailed. P.C.Gupta, Sr.P.A.